

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MICHAEL DARREL MILAM,

11 Plaintiff,

v.

12 DEPARTMENT OF CORRECTIONS, *et al.*,

13 Defendants.

CASE NO. C20-0689-JCC

ORDER

14  
15 This matter comes before the Court on Plaintiff's civil rights complaint (Dkt. No. 7), the  
16 Report and Recommendation ("R&R") of the Honorable Michelle L. Peterson, United States  
17 Magistrate Judge (Dkt. No. 9), Plaintiff's objections to the R&R (Dkt. No. 10), and Plaintiff's  
18 motion to stay (Dkt. No. 11). Having thoroughly reviewed the R&R and the relevant record, the  
19 Court hereby OVERRULES Plaintiff's objections, ADOPTS the R&R, and DENIES Plaintiff's  
20 motion for the reasons explained herein.

21 **I. BACKGROUND**

22 Plaintiff, proceeding *pro se* and *in forma pauperis*, brings this suit for money damages  
23 under 42 U.S.C. § 1983 against the Washington Department of Corrections ("DOC"), a DOC  
24 Community Corrections Officer, and a DOC Supervisor for alleged violations of his Eighth and  
25 Fourteenth Amendment rights. (Dkt. No. 7 at 3–6.) He alleges that he pleaded guilty to a crime  
26 in state court in 2008 and received a Drug Offender Sentencing Alternative ("DOSA") under

1 which he was required to serve 25 months in DOC custody followed by 25 months in the  
 2 community. (*Id.* at 5.) Plaintiff's DOSA was revoked and he was returned to custody to serve the  
 3 remainder of his 50-month sentence. (*Id.* at 5, 8.) He alleges that upon his release, he was  
 4 required to again serve a term of community custody, which caused his ultimate sentence to  
 5 exceed the statutory maximum for his offense of conviction. (*Id.*)

6 Judge Peterson issued an order directing Plaintiff to show cause why his complaint  
 7 should not be dismissed under 28 U.S.C. § 1915A(b)(1) for failure to state a cognizable ground  
 8 for relief. (Dkt. No. 8.) The Court explained that under *Heck v. Humprey*, 512 U.S. 477, 486–87  
 9 (1994), if a judgment in favor of a plaintiff on a civil rights action necessarily will imply the  
 10 invalidity of his conviction or sentence, the complaint must be dismissed unless the plaintiff  
 11 pleads facts showing that the conviction or sentence has already been invalidated. (Dkt. No. 8 at  
 12 3–4.) As Judge Peterson explained, Plaintiff's complaint is subject to dismissal because it does  
 13 not allege that his conviction or sentence has already been invalidated. (*Id.*) Plaintiff did not  
 14 respond to the Court's show cause order. Accordingly, Judge Peterson issued an R&R  
 15 recommending the Court dismiss Plaintiff's complaint without prejudice. (Dkt. No. 9.) Plaintiff  
 16 objects to the R&R, (Dkt. No. 10), and asks the Court to stay this case pending the outcome of a  
 17 personal restraint petition filed in state court challenging his sentence, (Dkt. No. 11).

## 18 II. DISCUSSION

### 19 A. Legal Standard

20 The district court must make a *de novo* determination of those portions of a magistrate  
 21 judge's report or specified proposed findings or recommendations to which a party objects. 28  
 22 U.S.C. § 636(b)(1). However, *de novo* review is not required when a party fails to direct a court  
 23 to a specific error in the proposed findings and recommendations. See *United States v. Midgette*,  
 24 478 F.3d 616, 622 (4th Cir. 2007); 32 Am. Jur. 2d *Federal Courts* § 145 (2010). A mere  
 25 recitation or summary of arguments previously presented is not an “objection” as that term is  
 26 used in this context since a valid “objection” must put the district court on notice of potential

1 errors in the magistrate judge’s report and recommendation. *VanDiver v. Martin*, 304 F. Supp. 2d  
2 934, 937-938 (E.D. Mich. 2004). Without a specific objection to particular aspects of the report  
3 and recommendation, “the district court’s attention is not focused on any specific issues for  
4 review, thereby making the initial [referral] to the magistrate useless. . . . [t]his duplication of  
5 time and effort wastes judicial resources rather than saving them, and runs contrary to the  
6 purposes of the Magistrates Act.” *Howard v. Secretary of Health and Human Services*, 932 F.2d  
7 505, 509 (6th Cir. 1991).

8       B. Plaintiff’s Objections

9 Plaintiff’s objections to the R&R essentially restate the allegations in Plaintiff’s  
10 complaint and do not address the *Heck* bar or contain any valid objections for the Court’s review.  
11 (See generally Dkt. No. 10.) In any case, the Court has reviewed Plaintiff’s complaint *de novo*  
12 and agrees with Judge Peterson that Plaintiff’s claims are barred by *Heck*. See 512 U.S. at 486–  
13 87. Because Plaintiff specifically challenges the duration of his sentence, a judgment in his favor  
14 would necessarily imply the invalidity of his sentence, and he has not alleged that his sentence  
15 has already been invalidated on direct appeal or through a collateral attack. Instead, he  
16 acknowledges that he has filed a personal restraint petition in the Washington Court of Appeals  
17 collaterally attacking his sentence, and that petition remains pending. (Dkt. No. 10 at 3; Dkt. No.  
18 11.)

19       C. Plaintiff’s Motion to Stay

20 Plaintiff asks the Court to stay this case pending the outcome of his personal restraint  
21 petition. (Dkt. No. 11; see also Dkt. No. 10 at 3.) Under *Edwards v. Balisok*, 520 U.S. 641, 649  
22 (1997), a stay is not appropriate. See 520 U.S. at 649 (finding that the lower court erred in  
23 staying a plaintiff’s *Heck*-barred claims because “absent some other bar to the suit, a claim either  
24 is cognizable under § 1983 and should immediately go forward, or is not cognizable and should  
25 be dismissed”).

26       Accordingly, the Court OVERRULES Plaintiff’s objections (Dkt. No. 10) and ORDERS:

- 1       1. The R&R (Dkt. No. 9) is APPROVED and ADOPTED.
- 2       2. Plaintiff's complaint (Dkt. No. 7) and this action are DISMISSED without prejudice.
- 3       3. Plaintiff's motion to stay (Dkt. No. 11) is DENIED.
- 4       4. The Clerk is DIRECTED to terminate Plaintiff's pending motion for summary  
5                  judgment (Dkt. No. 14) and motion to compel (Dkt. No. 15).
- 6       5. The Clerk is further DIRECTED to send copies of this order to Plaintiff and to Judge  
7                  Peterson.

8                  DATED this 8th day of April 2021.

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10                  John C. Coughenour  
11                  \_\_\_\_\_  
12                  John C. Coughenour  
13                  UNITED STATES DISTRICT JUDGE